

IN THE  
INDIANA SUPREME COURT

CASE No.: \_\_\_\_\_

IN RE THE MARRIAGE OF:

[REDACTED]

Appellant,

v.

[REDACTED]

Appellee .

) Appeal from the Indiana Court of Appeals,

) Case No. [REDACTED]

)

) Appeal from the [REDACTED]

)

)

) Trial Court Cause No.

)

) [REDACTED]

)

) The Honorable [REDACTED], Judge.

**PETITION FOR REHEARING**

Comes now Appellant, [REDACTED] by counsel, Bryan L. Ciyou and Darlene Seymour, and files her Petition for Rehearing, and in support thereof, shows this Court as follows:

**Summary Procedural Background**

- 1. That on [REDACTED], this Court denied transfer 5-0.<sup>1</sup>
- 2. That on [REDACTED] the Clerk of the Supreme Court certified the Memorandum

Decision of the Indiana Court of Appeals.

**Jurisdiction to Grant Rehearing**

3. That [REDACTED] has is aware of this Court’s rule stating, “[no] Petition for Rehearing may be filed from any order denying a Petition to Transfer. Ind.App. Rule 58(B).

4. That this Court has clarified the “tendency in procedural law to treat various kinds of serious procedural errors as defects in subject matter jurisdiction.” *In the Matter of the Adoption of O.R.*, 16 N.E.3d 965, 968 (Ind.2014) (rule stating that an appellant forfeits right to appeal if a

<sup>1</sup> This presupposes all five (5) justices on the Indiana Supreme Court voted in this case.

timely Notice of Appeal is not filed; but such does not deprive the Court from deciding appeal as it has jurisdiction to do so in its discretion); relied upon by the Court of Appeals in *Robertson v. Robertson*, 54A01-1509-DR1374 (July 28, 2016) (Slip. Op. p. 9).

5. That it appears this Court has the inherent authority to grant this Motion for Rehearing as Rule 58(H) is procedural, not jurisdictional.

6. That this Court has done so in the past in case of grave importance to public policy, such as in *Barnes v. State*, 946 N.E.2d 572 (Ind. May 12, 2011), *rehearing granted by Barnes v. State*, 953 N.E.2d 473 (Ind., Sept. 20, 2011).<sup>2</sup>

7. That based on these cases and development (or lack of material change in Rule 58(B)) ██████████ presupposes this Court has jurisdiction to grant this Motion for Rehearing, not that such authority should be granted in all but extraordinary types of cases.

#### **Rationale for Rehearing**

8. That as noted in her Petition for Rehearing, this case has a profound impact on a child's best interests and comity afforded to states' custody orders, one of the two sole purposes of the UCCJA and its variants in other states.

9. That this is well stated in the *Ashburn v. Ashburn*. 661 N.E.3d 39 (Ind.Ct.App.1996):

“[T]here are two stated purposes behind the UCCJA: first, to discourage child abductions in the name of child custody disputes, and second, to improve comity between states with regard to matters of child custody.” *Id.* at 40.

10. That the *Ashburn* case went on to note the significant connection test is inextricably

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<sup>2</sup> ██████████ research has revealed no change in the history of Rule 58(H) that would have allowed rehearing at that time and, upon revision, prohibited same. ██████████ does not think the *Barnes* case is different because transfer was granted in the first place and there were dissents in the *Barnes*' decision of this Court.

linked to the best interests of the child”. The threshold issue is whether the trial court correctly applied the ‘significant connection’ and ‘best interests of the child’ tests or whether the child’s home state was ██████ *Id.*

11. That, as set out in detail in ██████ Petition to Transfer, this ██████ year old child’s connections are as follows:

- The child moved to ██████ with Mother when ██████ was a small infant;
- The child has continuously resided in ██████ and is now ██████ years old;
- Father has spent a negligible amount of time with the child, with most of this parenting time taking place in ██████
- The child regards the Father as a stranger and is fearful of him;
- The child only has ties to ██████, such as family, school and friends; and
- ***The only connection to Indiana is that Father resides here.***

12. Under various policies of the UCCJA and significant connection test or inconvenient forum, for this case to stand eviscerates the purposes and use of the UCCJA and allows any court across the country to maintain jurisdiction as within its discretion. This is problematic for Indiana, and problematic for the entire country. Fundamentally, this type of precedent subverts the best interests of the children under the guise of comity and judicial discretion.

**WHEREFORE,** ██████ prays this Court grant her Petition for Rehearing, review the briefs already submitted, direct if additional briefing is helpful to the Court, all for relief just and proper in the premises.

Respectfully submitted,

/s/ Bryan Ciyou

Bryan L. Ciyou

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Petition for Rehearing was served upon the following counsel of record this [REDACTED] through the court's electronic filing system:

[REDACTED]  
[REDACTED]  
[REDACTED]

/s/ Bryan Ciyou

Bryan L. Ciyou

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